IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 3778 OF 1994

R. Sudanthira Rajan .. Petitioner

Vs.

The Union of India
and ors. .. Respondents

Mr. A.S. Ramesan for Petitioner.
None for the respondents.

CORAM : B. H. MARLAPALLE &
D. B. BHOSALE,JJ.

Date : March 16, 2006.

ORAL JUDGMENT (PER B.H. MARLAPALLE,J.):

1. This petition filed under Article 226 of the Constitution seeks a writ of mandamus against the respondent nos.2 and 3 for making applicable the benefits of the voluntary retirement scheme to him and as declared by a Circular dated 22/6/1993.

2. The petitioner was employed as Branch Manager under the Respondent No.2-Company, which is Government of India undertaking. The Company announced a voluntary retirement scheme on 22/6/1993 and it was in operation from 1/7/1993 to 30/9/1993. It was applicable to all the employees who had completed

minimum period of 10 years and attained the age of 40 years and above. The petitioner who had put in about 24 years of service submitted his application dated 31/8/1993 opting for the benefit of the voluntary retirement scheme and the same was received by the respondent no.2 on or about 3/9/1993. The application was scrutinized and forwarded to the higher authority with recommendations on or about 11/9/1993. The Company issued a Circular on 17/9/1993 stating that those who had applied for voluntary retirement scheme would proceed on voluntary retirement and they will be paid their dues or provident fund and gratuity. It was made clear in the said Circular that the money payable under the voluntary retirement scheme would be payable as and when it would be sanctioned by the Government of India under the NRF Scheme and it would be subject to availability of funds as may be released by the Government of India. Accordingly, the petitioner proceeded to opt for retirement by furnishing a declaration on 30/9/1993. It appears that by a letter dated 4/10/1993 he was recalled to join duties but the petitioner submitted a representation on 8/10/1993 and opted to retire voluntarily. He made it clear that in case the Government of India did not sanction the benefits under the voluntary retirement scheme, he would not claim the same and he would accept that he had retired

from service of the Company voluntarily on 30/9/1993. On 4/4/1994 the petitioner was addressed a letter informing him that the Government of India did not approve the voluntary retirement scheme for his category and, therefore, the Company was not in a position to pay the voluntary retirement compensation. Under the circumstances, his application dated 31/8/1993 was treated as resignation from the service of the Company.

3. Return has been filed on behalf of the respondent nos.2 and 3 by the Senior Personnel Manager and it has been stated that an amount of Rs.1,07,283/- being the Provident Fund dues and Rs.79,856/- being the gratuity amount payable to the petitioner came to be paid by cheques in January 1994 and February 1994 respectively. It has been further pointed out that the Government of India did not approve the voluntary retirement scheme for the managerial staff and it was initially made applicable to the workers. In the second phase the voluntary retirement scheme was made applicable to the sectional officers. A copy of the letter dated 18/3/1994 issued by the Ministry of Industry, Government of India and addressed to the Chairman and Managing Director of the respondent no.2-Company is on record and it is obvious that the scheme was not made applicable to the managerial staff

like the petitioner. It is also clear that the respondent no.2-Company had approached the Government of India with a recommendation to make the scheme applicable to all the employees relieved prior to the approval of 18/3/1994 and 31/3/1994 and the same proposal was turned down by the Government of India vide its communication dated 2/5/1994 in consultation with the Internal Finance Wing in the Ministry of Industry.

4. It is thus clear that after the petitioner was informed on 30/9/1993 that his application for voluntary retirement was accepted, he had submitted a declaration that the acceptance of his application dated 31/8/1993 shall be subject to the approval by the Government of India and if the additional financial benefits under the voluntary retirement scheme were not approved by the Government of India, he would not claim the same and he would separate from the Company as retired voluntarily. By a communication dated 4/10/1993 he was called upon to rejoin and he replied the same on 8/10/1993 reiterating his determination to separate from the Company's service and irrespective of whether the Government of India would approve the voluntary retirement scheme in his case. As referred to hereinabove the Government of India has not approved

the scheme for the managerial staff. Initially it was approved for the workers and subsequently it was made applicable to the level of sectional officers. From the managerial category in all 55 applications were received and 20 of them opted to separate from 1/10/1993. The petitioner was one of these 20 managerial staff who accepted to retire without the additional financial benefits if the Government of India did not approve the voluntary retirement scheme announced by the respondent no.2. In the obtaining circumstances, we do not see any case to issue a writ directing the respondent nos.2 and 3 to extend the benefits of the voluntary retirement scheme to the petitioner. The petitioner was himself aware that the scheme was subject to the approval of the Government of India which approval did not come and the petitioner had made his intentions quite clear that he would separate from the Company's service even if the additional financial benefits were not approved by the Government of India. The allegations of arbitrariness or denial of the benefits of the scheme by violating any of the service rights cannot be accepted and it has not been pointed out that any manager like the petitioner who opted to be relieved from 30/9/1993 was extended the benefits of the voluntary retirement scheme as pronounced on 22/6/1993. We have also noted that on retiring from the Respondent No.2 - Company, the petitioner joined somewhere else and he was not unemployed.

5. In the result, this petition fails and the same is hereby dismissed. Rule discharged. No costs.

(D.B. Bhosale,J.) **(B.H. Marlapalle, J.)**